



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/172744

PRELIMINARY RECITALS

Pursuant to a petition filed March 14, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Fond Du Lac County Department of Social Services in regard to Child Care (CC), a hearing was held on April 07, 2016, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly established a childcare overpayment in the amount of \$1,530 in December 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

By Attorney Emily Parks

Parks Law Office, LLC
17 Forest Ave Suite 110
Fond Du Lac, WI 54935

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]

Fond Du Lac County Department of Social Services
50 N Portland St
Fond Du Lac, WI 54935

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Fond Du Lac County.

2. The petitioner's household consists of herself, her husband, and two grandchildren. The petitioner had and continues to have temporary guardianship of her grandchildren.
3. On December 4, 2015 the petitioner applied for childcare assistance for her two grandchildren. The petitioner correctly disclosed her monthly household gross income in excess of \$8,000. Both the petitioner and her husband work. This income is from their employment.
4. When the petitioner applied in December 2015 she was not receiving kinship care assistance. Because the petitioner had temporary guardianship of her grandchildren, the agency disregarded the household's income, and opened the petitioner for childcare assistance for her grandchildren.
5. At the end of January 2016 the petitioner learned from her childcare provider that there was an issue with her childcare assistance.
6. She followed up with the agency, and learned that she was not eligible for childcare assistance without kinship care benefits. Without kinship care benefits the agency had to count the household's monthly gross income, which was well over the program income limit.
7. The petitioner applied for kinship care benefits in February 2016.
8. On February 3, 2016 the agency sent the petitioner a notice of childcare overpayment stating that she was overpaid \$1,530 in childcare benefits in December 2015.
9. On March 14, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The purpose of the Wisconsin Shares Child Care Program is to provide child care assistance for working low-income families. *Child Care Manual* § 1.1.1. The Wisconsin Shares Child Care Program is regulated under DCF 201 Administration of Child Care Funds (administrative code) and Wisconsin Statutes s. 49.155 Stats. *Child Care Manual* § 1.1.1.

In order to qualify for child care assistance, the recipient must be financially eligible for childcare assistance. *Child Care Manual* § 1.5.0 (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed June 2016)). Generally the income limit for an initial application is 185% FPL. This is a monthly gross income of \$3,739 for a household size of four. *Id.* § at 1.5.1. The financial eligibility test for foster care, subsidized guardianship, interim caretaker, and relatives with court-ordered placement who receive a Kinship Care payment is based upon the child's biological or adoptive parents' income tested at 200% Federal Poverty Level (FPL) at the time the child was removed from the home. *Id.* at § 1.8.1.

The recipient must also be in an "approved activity." The term "approved activity" is a term of art in child care assistance cases. *Id.* Approved activities include employment with a qualified employer or if the parent needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. *Id.* at § 1.5.3.1 and § 1.5.4.

If the agency pays for child care when a person is not in an approved activity, the applicable overpayment rule requires the agency to establish and recover an overpayment, **regardless of fault**. Wis. Admin. Code §DCF 201.04(5)(a) emphasize added. See in accord, *Child Day Care Manual*, §2.3.1.

In this case the petitioner argues that this overpayment is the agency's fault. Had the agency processed her childcare application, and told her that she was only eligible for child care assistance with kinship care, she would have applied for kinship care, resulting in no overpayment, and earlier child care assistance coverage. I do not disagree with the petitioner's argument. The problem though is that policy and regulations direct the agency to establish and recover an overpayment regardless of fault.

As a practical matter the petitioner will began receiving kinship benefits in February 2016. Kinship benefits are approximately \$215 per month per child. With two children in the petitioner's home, she receives about \$330 each month. She was not originally seeking these benefits, and these benefits will not only allow the petitioner to obtain child care assistance in the future, but also more than cancel out this overpayment.

CONCLUSIONS OF LAW

The agency correctly established a childcare overpayment in the amount of \$1,530 for December 2015.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

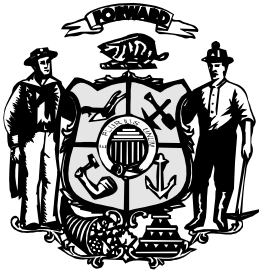
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2016.

Fond Du Lac County Department of Social Services
Public Assistance Collection Unit
Child Care Fraud